

HOUSE HEALTH & HUMAN RESOURCES COMMITTEE AMENDMENT #1

Amendment No. 2 to HB1679

Armstrong
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1721*

House Bill No. 1679

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. It is the purpose of this act to promote the health, safety, and welfare of the people of Tennessee by establishing an orderly system of acupuncture certification and to provide a valid, effective means of establishing certification requirements without undue financial burden to the people of Tennessee through the use of a national certifying commission that has been established to certify the competency of acupuncturists.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 6, is amended by adding Sections 3 through 15 as a new part thereto.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance and restoration of health and the prevention of disease;

(2) "Board" means the Tennessee Board of Medical Examiners;

(3) "ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine;

(4) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine;

(5) "Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based on oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include acupressure, cupping, thermal and electrical treatment, and

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the recommendation of dietary guidelines and supplements and therapeutic exercise based on traditional oriental medicine concepts;

(6) "ADS" means an acupuncture detoxification specialist trained in, and who performs only, the five (5) points auricular detoxification treatment; and

(7) "NADA" means the National Acupuncture Detoxification Association.

SECTION 4.

(a) This act shall not apply to:

(1) Physicians licensed to practice medicine or osteopathy in the state of Tennessee, nor shall any part of this act be construed so as to prevent that practice of acupuncture by licensed physicians in the state of Tennessee; or

(2) Registered nurses who are nationally certified as holistic nurses and who have successfully completed an accredited education program in acupuncture.

(b) It is otherwise unlawful to practice acupuncture for compensation or gratuitously unless certified under this act. This restriction does not apply to the following:

(1) A student practicing acupuncture under the supervision of a certified acupuncturist as part of a course of study approved by the committee; or

(2) Individuals who do not otherwise possess the credentials required for the practice of acupuncture by this act or regulations promulgated hereunder by the board are granted limited certification as an ADS for the purpose of the

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treatment of alcoholism, substance abuse, or chemical dependency if they meet the following conditions:

(A) Provide documentation of successful completion of a board-approved training program in auricular detoxification acupuncture which meets or exceeds standards of training set by NADA;

(B) Practice auricular detoxification treatment in a hospital, clinic, or treatment facility which provides comprehensive alcohol and substance abuse or chemical dependency services, including counseling, under the supervision of a certified acupuncturist or medical director;

(C) Satisfy all appropriate ethical standards specified in Section 9; and

(D) Limit their practice to the five (5) point auricular detoxification treatment.

(c) A violation of this section is a Class C misdemeanor. A person who violates this section shall also be subject to the sanctions specified in Section 9.

SECTION 5.

(a) To assist the board in the performance of its duties, there is hereby established the Tennessee Advisory Committee for Acupuncture.

(b) The committee shall consist of five (5) members appointed by the governor. Three (3) of the members shall be certified acupuncturists, one (1) shall be an ADS practicing in Tennessee; and one (1) shall be a consumer member who is not employed in a health care profession. The three (3) acupuncturists initially appointed need not be

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certified at the time of their appointments, but must meet all the qualifications for certification.

(c) Of the initial appointments to the committee, two (2) members shall be appointed for terms of three (3) years; two (2) members shall be appointed for terms of two (2) years; and one (1) member shall be appointed for a term of one (1) year. All regular appointments thereafter shall be for terms of four (4) years. No person may serve more than two (2) consecutive full terms as a member of the committee. Each member shall serve on the committee until a successor is appointed. Vacancies shall be filled by appointment of the governor for the unexpired term.

(d) At the committee's first meeting each year after any new members have been appointed, the members shall choose one (1) member to chair the committee for the year and another to serve as co-chair. No person shall chair the committee for more than five (5) consecutive years.

(e) The committee shall meet at least once each year within forty-five (45) days after the appointment of the new members. The committee shall meet at other times as needed to perform its duties.

(f) Each member shall receive all necessary expenses incident to conducting the business of the committee and, in addition thereto, shall be entitled to a per diem of fifty dollars (\$50) for each day's service in conducting the business of the committee. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

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(g) The committee shall receive from the division of health-related boards of the department of health all administrative, investigatory and clerical services as provided for in Section 63-1-101. Committee expenses shall be paid from funds generated by certification fees generated by acupuncturists and ADSes.

SECTION 6. The board, in consultation with the committee, shall:

(a)

(1) Establish the qualifications and fitness of applicants of certifications, renewal of certifications and reciprocal certifications;

(2) Establish grounds for revocation, suspension, or denial of certification;

(3) Establish grounds for placing on probation of a holder of a certificate;

(4) Establish the categories of fees and the amount of fees that may be imposed in connection with certification;

(5) Issue declaratory orders pursuant to the Uniform Administrative Procedures Act;

(6) If deemed necessary by the committee, establish standards of continuing education; and

(7) Adopt and use a seal to authenticate official documents of the committee.

(b) Any actions taken under this section shall only be effective after adoption of a majority vote of the members of the committee. The board, by a majority vote of its members at the next board meeting at which administrative matters are considered, may rescind any action taken by the committee.

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SECTION 7.

(a) To receive certification to practice acupuncture from the board, a person must document:

(1) Either:

(A) Current active status as a diplomate in acupuncture of the NCCAOM; or

(B) Current state licensure in good standing by another state with substantially equivalent or higher standards; and

(2) Successful completion of a three (3) year post-secondary training program or acupuncture college program which is ACAOM accredited or in candidacy status or which meets ACAOM's standards; and

(3) Successful completion of a NCCAOM-approved clean needle technique course.

(b) The committee shall waive the requirements of subsection (a) and an applicant residing in Tennessee upon the effective date of this act, who presents satisfactory evidence to the committee no later than December 31, 1999, of successful completion of an approved apprenticeship or tutorial program that meets NCCAOM standards shall be granted certification by the board.

(c) ADSes who meet the requirements listed in Section 4 shall be issued a limited acupuncture certificate.

SECTION 8. A certificate to practice acupuncture must be renewed every two (2) years.

To renew a certificate, a person must submit proof of current active NCCAOM certification in

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acupuncture or document compliance with Section 7. To renew an ADS certificate, a person must submit proof of current active practice in auricular detoxification treatment, as determined by the committee.

SECTION 9. The board, in consultation with the committee, may deny, suspend, or revoke certification, require remedial education, or issue a letter of reprimand, if an applicant or certified acupuncturist:

(1) Engages in false or fraudulent conduct which demonstrates an unfitness to practice acupuncture, including:

(A) Misrepresentation in connection with an applicant for certification or an investigation by the committee;

(B) Attempting to collect fees for services which were not performed;

(C) False advertising, including guaranteeing that a cure will result from an acupuncture treatment; or

(D) Dividing or agreeing to divide a fee with anyone for referring the patient for acupuncture;

(2) Fails to exercise proper control over one's practice by:

(A) Delegating professional responsibilities to a person the acupuncturist knows or should know is not qualified to perform; or

(B) Failing to exercise proper control over uncertified personnel working with the practice;

(3) Fails to maintain records in a proper manner by:

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(A) Failing to keep written records describing the course of treatment for each patient;

(B) Refusing to provide a patient, upon request, records that have been prepared for or paid for by the patient; or

(C) Revealing personally identifiable information about a patient, without consent, unless otherwise authorized by law;

(4) Fails to exercise proper care of a patient, including the exercising or attempting to exercise undue influence in the acupuncturist/patient relationship by making sexual advances or requests for sexual activity, or making submission to such conduct a condition of treatment;

(5) Displays substance abuse or mental impairment to such a degree as to interfere with the ability to provide safe and effective treatment;

(6) Is convicted or pleads guilty or no contest to any crime which demonstrates an unfitness to practice acupuncture;

(7) Negligently fails to practice acupuncture with the level of skill recognized within the profession as acceptable under such circumstances;

(8) Willfully violates any provision of this act or rule of the commission; or

(9) Has had a certificate or license denied, suspended, or revoked in another jurisdiction for any reason which would be grounds for such action in Tennessee.

SECTION 10.

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(a) All certified individuals under this act shall use only pre-sterilized, disposable needles in their administration of acupuncture treatments. The use of staples in the practice of acupuncture is prohibited.

(b) Health practices shall include:

(1) Hands shall be washed with soap and water or other disinfectant before handling needles and between treatment of different patients;

(2) Skin in the area of penetration shall be thoroughly swabbed with alcohol or other germicidal solution before inserting needles; and

(3) Individuals shall pass a nationally recognized clean needle technique course before being allowed practicing acupuncture and related techniques.

SECTION 11.

(a) The board, in consultation with the committee, shall set fees relative to the application, certification, and renewal thereof in amounts sufficient to pay all of the expenses of certification and of the committee directly attributable to the performance of its duties under this act.

(b) All deposits and disbursements shall be handled in accordance with Section 63-1-137.

SECTION 12.

(a) The titles "Licensed Acupuncturist" or "ADS" may be used by persons certified under this act. No person who is not properly licensed to practice medicine or osteopathy shall use certification under this act to identify himself or herself as a doctor or physician.

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(b) Each person certified to practice acupuncture shall post the certificate in a conspicuous location at such person's place of practice.

SECTION 13. Tennessee Code Annotated, Section 4-29-222(a), is amended by adding a new item thereto, as follows:

() Tennessee Advisory Committee for Acupuncture, created by Section 5 of this act;

SECTION 14. It is the intent of the general assembly that certification of acupuncturists under this board shall cease and terminate on June 30, 2001. After June 30, 2001, the board shall issue licenses to those acupuncturists who are certified upon such date who meet the qualifications set out in this act. Certification is intended to be a temporary measure, and shall expire as licensure of acupuncturists is implemented.

SECTION 15. For the purposes of making appointments to the committee and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2000, the public welfare requiring it.